

MAY 18 2011

**Board of Vocational Nursing  
and Psychiatric Technicians**

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**BEFORE THE  
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:  
**DANIEL GONZALES**  
5500 West Judy Court  
Visalia, California 93277  
**Vocational Nurse License No. VN 140431**  
  
Respondent.

Case No. VN-2008-262

**A C C U S A T I O N**

Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") alleges:

**PARTIES**

1. Complainant brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians ("Board"), Department of Consumer Affairs.

2. On or about July 6, 1988, the Board issued Vocational Nurse License Number VN 140431 to Daniel Gonzales ("Respondent"). The license was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2012, unless renewed.

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## STATUTORY PROVISIONS

3. Business and Professions Code ("Code") section 2875 provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

4. Code section 118(b) provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under Code section 2892.1, the Board may renew an expired license at any time within four years after the expiration.

5. Code section 2878 states, in pertinent part:

The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, § 2840, et seq.)] for the following:

(a) Unprofessional conduct.

(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction."

6. Code section 2878.5 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter, it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(b) Use any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public, or to the extent that the use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving possession of any narcotic or dangerous drug, or the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, in which event the record of the conviction is conclusive evidence thereof.

## COST RECOVERY

7. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of Crimes)**

3 8. Respondent is subject to discipline under Code section 2878(f), in that on or about  
4 November 5, 2008, in the case of *People v. Daniel Gonzales*, (Super. Ct. Tulare County, 2008,  
5 Case No. DCF207112), Respondent was convicted by the Court on his plea of no contest of  
6 violating Vehicle Code section 23153(b) (driving with a .08% blood alcohol level causing injury),  
7 with the following special allegations: 1) Vehicle Code section 23558 (bodily injury to more than  
8 one victim, A.L); 2) Vehicle Code section 23558 (bodily injury to more than one victim, J.F.);  
9 3) Vehicle Code section 23558 (bodily injury to more than one victim, A.C.); and 4) Vehicle  
10 Code section 23578 (blood alcohol content of .15% and more, by weight), misdemeanors. The  
11 crimes are substantially related to the qualifications, functions, or duties of a licensed vocational  
12 nurse.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Conviction of Crimes Involving the Consumption of Alcohol)**

15 9. Respondent is subject to discipline under Code section 2878(a), on the grounds of  
16 unprofessional conduct as defined in Code section 2878.5(c), in that on or about  
17 November 5, 2008, Respondent was convicted of crimes involving the consumption of alcohol, as  
18 more particularly set forth above in paragraph 8.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Use of Alcohol)**

21 10. Respondent is subject to discipline under Code sections 2878(a), on the grounds of  
22 unprofessional conduct as defined in Code section 2878.5(b), in that on or about July 20, 2008,  
23 Respondent used an alcoholic beverage to an extent or in a manner dangerous or injurious to  
24 himself, and the public, when he operated a motor vehicle while under the influence of alcohol  
25 and/or drugs, as more particularly set forth above in paragraph 8.

26 **PRIOR DISCIPLINE**

27 11. Effective January 19, 2003, in a disciplinary action titled, "*In the Matter of the*  
28 *Accusation Against: Daniel Gonzales, Case No. 6444*," the Board adopted a Decision and Order

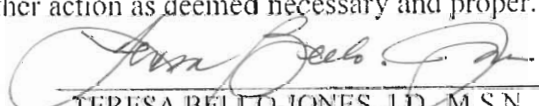
1 wherein Respondent's Vocational Nurse License Number VN 140431 was revoked. However the  
2 revocation was stayed and Respondent was placed on probation for a period of four (4) years  
3 under terms and conditions. The Decision and Order was based on numerous Findings of Fact,  
4 including the following: 1) Respondent obtained controlled substances by fraud, deceit, or  
5 subterfuge, in violation of Health and Safety Code section 11173(a); 2) Possessed controlled  
6 substances, in violation of Code section 4060; 3) Self-administered controlled substances;  
7 4) Used controlled substances to an extent or in a manner dangerous or injurious to himself or  
8 others; and 5) Falsified patient medical records. The Decision and Order is attached hereto as  
9 **Exhibit A.**

10 **PRAYER**

11 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,  
12 and that following the hearing, the Director of Consumer Affairs issue a decision:

- 13 1. Revoking or suspending Vocational Nurse License Number VN 140431, issued to  
14 Daniel Gonzales;
- 15 2. Ordering Daniel Gonzales to pay the Board of Vocational Nursing and Psychiatric  
16 Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to  
17 Code section 125.3; and,
- 18 3. Taking such other and further action as deemed necessary and proper.

19 DATED: May 18, 2011

  
TERESA BELLO-JONES, J.D., M.S.N., R.N.  
Executive Officer  
Board of Vocational Nursing and Psychiatric Technicians  
Department of Consumer Affairs  
State of California  
*Complainant*

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Exhibit A  
Decision & Order

BEFORE THE  
BOARD OF VOCATIONAL NURSING  
AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation  
Against:

Case No. 6444

DANIEL GONZALES  
5500 West Judy Court  
Visalia, CA 93277

OAH No. N2002050217

Vocational Nurse License  
Number VN 140431

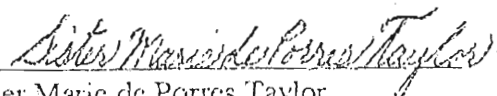
Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the Final Decision in the above entitled matter.

This Decision shall become effective on January 19, 2003.

IT IS SO ORDERED this 20<sup>th</sup> day of December, 2002.

  
Sister Maric de Porres Taylor  
President

BEFORE THE  
BOARD OF VOCATIONAL NURSING  
AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation  
Against:

DANIEL GONZALES  
5500 West Judy Court  
Visalia, California 93277

Vocational Nurse  
License No. VN-140431

Respondent.

Case No. 6444

OAH No. N2002050217

**PROPOSED DECISION**

Administrative Law Judge Catherine B. Frink, State of California, Office of Administrative Hearings, heard this matter in Fresno, California on August 7, 2002.

Kent D. Harris, Deputy Attorney General, represented the complainant.

Respondent was present and represented himself.

Evidence was received, the hearing was closed, and the record was held open for the receipt of original documents to be substituted for copies used at hearing. On August 14, 2002, the Office of Administrative Hearings received the original Certification of Costs of Investigation and Prosecution by Agency Executive Officer, which was appended to Exhibit 4, and an updated License Certification, dated August 6, 2002, which was appended to Exhibit 2. Thereupon, the record was closed and the matter was submitted on August 14, 2002.

**FACTUAL FINDINGS**

1. Complainant Teresa Bello-Jones, M.S.N., R.N., filed the Accusation in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs ("the Board").

2. On July 16, 1988, the Board issued Vocational Nurse License No VN 140431 to Daniel Gonzales ("respondent"). The license expired on April 30, 1994 and was renewed on May 11, 1994. The license expired on April 30, 1996 and was renewed on May 3, 1996. The license expired on April 30, 1998 and was renewed on September 19, 1998. The license is currently in effect and will expire, unless renewed, on April 30, 2004.

3. Respondent stipulated that the following facts are true:

A. DRUGS

"Vicodin" is a compound consisting of 5 mg. Hydrocodone bitartrate also known as dihydrocodeinone, a Schedule III controlled substance as designated by Health and Safety Code ("HSC") section 11056(e)(4), and 500 mg. of acetaminophen per tablet.

"Soma Compound with Codeine" is a compound consisting of carisoprodol, aspirin, and codeine phosphate, and a Schedule III controlled substance as designated by HSC section 11056(e)(2).

"Tylenol with Codeine" is a compound consisting of not more than 90 mg. of codeine, a Schedule III controlled substance as designated by HSC section 11056(e)(2), and 300 mg. of acetaminophen per tablet.

B. Respondent has subjected his vocational nurse license to discipline under Business and Professions Code ("BPC") section 2878(a) on the grounds of unprofessional conduct, as defined in BPC section 2878.5(a), in that between approximately May 5, 1998, through approximately January 1, 1999, while employed as a licensed vocational nurse at the Dinuba Health Center Clinic, Dinuba, California, respondent obtained Vicodin, Soma Compound with Codeine, and Tylenol with Codeine, all controlled substances, by fraud, deceit, or subterfuge, a violation of HSC section 11173(a), by calling prescriptions in his own name, at various pharmacies without authorization, as follows:

**United Pharmacy, Dinuba, California**

<u>Date</u>	<u>Medication</u>	<u>Quantity</u>	<u>Physician</u>
5/5/98	Hydrocodone	50 tablets	Le
5/11/98	Carisprodol w/Codeine	100 tablets	Le
5/15/98	Hydrocodone	50 tablets	Le
5/22/98	Carisprodol w/Codeine	100 tablets	Le
6/3/98	Carisprodol w/Codeine	100 tablets	Le
6/15/98	Carisprodol w/Codeine	100 tablets	Le
6/19/98	Hydrocodone	50 tablets	Le
6/26/98	Carisprodol w/Codeine	100 tablets	Le
7/8/98	Carisprodol w/Codeine	100 tablets	Le



7/13/98	Hydrocodone	50 tablets	Le
7/20/98	Carisprodol w/Codeine	100 tablets	Le
7/24/98	Hydrocodone	50 tablets	Le
7/31/98	Carisprodol w/Codeine	100 tablets	Le
8/5/98	Hydrocodone	50 tablets	Le
8/12/98	Carisprodol w/Codeine	100 tablets	Le
8/19/98	Hydrocodone	50 tablets	Le
8/24/98	Carisprodol w/Codeine	100 tablets	Le
8/28/98	Hydrocodone	50 tablets	Le
9/4/98	Carisprodol w/Codeine	100 tablets	Le
9/11/98	Hydrocodone	50 tablets	Le
9/16/98	Carisprodol w/Codeine	100 tablets	Le
9/23/98	Hydrocodone	50 tablets	Le
9/28/98	Carisprodol w/Codeine	100 tablets	Le
10/9/98	Carisprodol w/Codeine	100 tablets	Le
10/21/98	Carisprodol w/Codeine	100 tablets	Le
11/2/98	Carisprodol w/Codeine	100 tablets	Le
11/13/98	Carisprodol w/Codeine	100 tablets	Le
11/25/98	Carisprodol w/Codeine	100 tablets	Le
12/7/98	Carisprodol w/Codeine	100 tablets	Le
12/18/98	Carisprodol w/Codeine	100 tablets	Le
12/30/98	Carisprodol w/Codeine	100 tablets	Le
1/11/99	Carisprodol w/Codeine	100 tablets	Le

**Rite Aid, Dinuba, California**

<u>Date</u>	<u>Medication</u>	<u>Quantity</u>	<u>Physician</u>
7/29/98	Acetaminophen w/Codeine	45 tablets	Le

C. Respondent has subjected his vocational nurse license to discipline under BPC section 2878(a) on the grounds of unprofessional conduct, as defined in BPC section 2878.5(a), in that between approximately May 5, 1998, through approximately January 1, 1999, while employed as a licensed vocational nurse at the Dinuba Health Center Clinic, Dinuba, California, respondent possessed Vicodin, Soma Compound with Codeine, and Tylenol with Codeine, all controlled substances, without lawful authority, in violation of BPC section 4060.

D. Respondent has subjected his vocational nurse license to discipline under BPC section 2878(a) on the grounds of unprofessional conduct, as defined in BPC section 2878.5(a), in that between approximately May 5, 1998, through approximately January 1, 1999, while employed as a licensed vocational nurse at the Dinuba Health Center Clinic, Dinuba, California, respondent self administered Vicodin, Soma Compound with Codeine, and Tylenol with Codeine, all controlled substances.

E. Respondent has subjected his vocational nurse license to discipline under BPC section 2878(a) on the grounds of unprofessional conduct, as defined in BPC section 2878.5(b), in that between approximately May 5, 1998, through approximately January 1, 1999, while employed as a licensed vocational nurse at the Dinuba Health Center Clinic, Dinuba, California, respondent used Vicodin, Soma Compound with Codeine, and Tylenol with Codeine, all controlled substances, to an extent or in a manner dangerous or injurious to himself or others, or to the extent that such use impaired his ability to conduct with safety to the public the practice authorized by his license.

F. Respondent has subjected his vocational nurse license to discipline under BPC section 2878(a) on the grounds of unprofessional conduct, as defined in BPC section 2878.5(e), in that between approximately May 5, 1998, through approximately January 1, 1999, while employed as a licensed vocational nurse at the Dinuba Health Center Clinic, Dinuba, California, respondent falsified hospital records by forging the signature of Dr. Luan Le to prescriptions in respondent's name, without Dr. Le's knowledge or permission.

G. Respondent has subjected his vocational nurse license to discipline under BPC section 2878(j), in that respondent committed acts involving dishonesty, as set forth in Findings 3.B, 3.C and 3.F above. Such conduct is substantially related to the qualifications, functions and duties of a licensed vocational nurse.

4. Respondent began using narcotic medication in 1989 after he ruptured two discs in his back while working in a hospital as a licensed vocational nurse ("LVN"). Respondent was prescribed Soma with Codeine for pain. Respondent continued to use prescribed painkillers for several years and eventually developed an addiction. Respondent was using a combination of legitimately prescribed pain medication and "self-prescribed" medication, as set forth in Finding 3.B above, while employed by Tulare County at the Dinuba Health Center Clinic. Respondent tried to stop using painkillers, but experienced withdrawal symptoms. Respondent began abusing alcohol as a way to cope with drug withdrawal. On one occasion, respondent drank alcohol during lunch, and co-workers detected the odor of alcohol on respondent's person when he returned to work; when his employer searched his locker, the forged refill slips for controlled substances were discovered.

5. Respondent's employer placed respondent on administrative leave and sent respondent to the Tulare County Employee Assistance Program. Respondent attended Pine Recovery, a 60-day residential treatment program. However, respondent was terminated from the program after 45 days due to a financial dispute, and Tulare County thereafter terminated his employment in November 1999 for failure to complete the Employee Assistance Program requirements.

6. From December 1999 to December 2000, respondent worked as a charge nurse for a convalescent hospital. Respondent was still using some painkillers, but his alcohol

abuse escalated to the point that respondent "destroyed his family." Respondent's wife and three children left him in late December of 2000. Respondent entered a six-day detox program at Cedar Vista Hospital. About one month later, on January 26, 2001, respondent entered the Teen Challenge rehabilitation program upon the recommendation of his pastor. The program combines a 12-step program with a men's Christian discipleship program, involving bible study, individual and group counseling, as well as work to pay the tuition. Separate Alcoholics Anonymous ("AA") and/or Narcotics Anonymous ("NA") meetings are not part of the program.

7. Respondent completed the 10-month residential phase of the Teen Challenge program in December of 2001 and began a six-month aftercare program. While in aftercare, respondent was able to live at home and participate in church activities. He met weekly with his pastor for about five minutes, and he called in to the Teen Challenge office about once per month. Through his church, he participated in a men's "accountability group," which meets weekly for 1-½ hours to study the Bible and discuss personal issues of importance to the group participants. AA/NA was not part of respondent's aftercare program. Respondent graduated from the Teen Challenge program on May 24, 2002.

8. Respondent was not employed during the period of his participation in Teen Challenge. Respondent began working for Maxim Health Care, a home health agency, in June of 2002. Respondent works full-time for a single client, an 18-month old child with Down Syndrome who is on a ventilator after open heart surgery.

9. Respondent has been clean and sober since January 26, 2001. Respondent has reconciled with his wife, who is strongly supportive of his recovery. Respondent's wife knew respondent had been drinking during lunch while employed at Dinuba Health Center Clinic and called his employer so that he would be "caught." She has noticed a marked change in respondent's ability to handle stress since his completion of the Teen Challenge program. Respondent is active at Love Fellowship Church in Selma, California. He attends weekly services and bible study, and he continues to participate in the men's accountability group. Both co-leaders of the accountability group have experience dealing with individuals with addictions, and one is a former addict. The group members are prepared to intervene in the lives of individual members if there is any evidence of self-destructive behaviors.

10. Respondent has accepted full responsibility for the conduct that led to the violations herein. He has declined the opportunity to use prescription painkillers even when legitimately prescribed by a physician, as exemplified by his decision not to use prescription pain medication after urinary tract surgery. His life has undergone a profound change as a result of the near-loss of his family and profession and his decision to maintain sobriety.

11. Complainant has requested reimbursement for costs incurred by the Board in connection with the investigation and prosecutions of this matter, in the total amount of \$10,723.50. The costs were certified in the manner provided by BPC section 125.3(c). The requested costs include 9 hours of paralegal time, in the amount of \$477, and 19.6 hours of attorney time, in the amount of \$2,184. The reimbursement request also includes \$8,062.50

in investigative costs attributable to Todd Smith, Senior Investigator employed by the Division of Investigation of the Department of Consumer Affairs. The Declaration submitted by Mr. Smith in support of this cost reimbursement request indicates that Mr. Smith spent 22.75 hours on his investigation of this matter, 5.25 hours of travel, and 40.5 hours of report preparation, "which included case file organization and preparing attachments, editing and preparing and transmitting final report." The investigative report was not made part of the record. On its face, the cost of investigation of this matter is excessive. In particular, 40.5 hours to prepare the investigation report seems out of proportion to the magnitude of the case herein. Under all of the circumstances herein, 10.5 hours is a more reasonable calculation of the time necessary to prepare the investigative report. Therefore, 30 hours, at a rate of \$120 per hour, or \$3,600, shall be deducted from the investigative costs. The total amount of costs shall be reduced to \$7,123.50.

#### APPLICABLE STATUTES AND REGULATIONS

1. BPC section 2878 states in pertinent part as follows:

##### § 2878. Grounds for action

"The board may suspend or revoke a license issued under this chapter for any of the following:

"(a) Unprofessional conduct, ...

"...

"(j) The commission of any act involving dishonesty, when that action is related to the duties and functions of the licensee.

"..."

2. BPC section 2878.5 states in pertinent part as follows:

##### § 2878.5. Drug-related offenses

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist or podiatrist administer to himself or herself or furnish or administer to another, any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Article 8 (commencing with Section 4210) of Chapter 9 of Division 2 of this code.

“(b) Use any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Article 8 (commencing with Section 4210) of Chapter 9 of Division 2 of this code, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public, or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

“...

“(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to narcotics or dangerous drugs as specified in subdivision (b).”

3. BPC section 4060 states as follows:

#### **§ 4060. Possession of controlled substance**

“No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, physician, podiatrist, dentist, veterinarian, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

“Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, or a physician assistant to order his or her own stock of dangerous drugs and devices.”

4. BPC section 125.3 states in pertinent part as follows:

#### **§ 125.3. Direction to licentiate violating licensing act to pay costs of investigation and enforcement**

“(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board or the board created by the Chiropractic Initiative Act, the board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

“...

“(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

“(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

“(e) Where an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licentiate to pay costs.

“(f) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

“(g)(1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licentiate who has failed to pay all of the costs ordered under this section.

“(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licentiate who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.

“...”

5. HSC section 11173(a) states as follows:

**§ 11173. Prohibited fraudulent acts**

“(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.”

6. Title 16, California Code of Regulations (“16 CCR”) section 2521 states in pertinent part as follows:

## § 2521. Substantial Relationship Criteria

“For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational nurse to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

“ ...

“(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of Chapter 6.5, Division 2 of the Business and Professions Code.

“ ...”

7. 16 CCR section 2524 states as follows:

## § 2524. Disciplinary Guidelines

“In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.) the Board shall consider the disciplinary guidelines entitled "Disciplinary Guidelines", (Rev. 1/1/2000), which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Board, in its sole discretion, determines that the facts of the particular case warrant such a deviation -- for example: the; presence of mitigating factors; the age of the case; evidentiary problems.”

8. Title 1 CCR section 1042 states as follows:

## § 1042. Agency Request for Costs of Investigation and Prosecution of the Case

“(a) When an agency requests costs of investigation and prosecution of the case, it shall allege in the pleading a demand for the costs and the authorizing statute or regulation.

“(b) Unless the applicable cost recovery statute provides otherwise, evidence relating to cost recovery shall be submitted in the following manner:

“(1) Evidence relating to costs shall be submitted by Declaration executed by the agency or its designee.

“(2) A Declaration in support of costs incurred by the agency for services provided by regular agency employees should include sufficient information by which the ALJ can determine the costs incurred in connection with the matter and the reasonableness of the costs (for example, a general description of tasks performed, the time spent on each task, and the method of calculating the cost for the services).

“(3) Services provided by other persons shall be supported by a Declaration by that person providing each service which should contain sufficient information by which the ALJ can determine the costs incurred in the matter and the reasonableness of the costs (for example, a general description of the tasks performed, the time spent on each task and the hourly rate or other form of compensation). In lieu of the service provider's Declaration, the agency or its designee may attach to its Declaration copies of time and billing records upon which costs were incurred by the agency.

“(4) For other costs incurred by the agency, the bill, invoice, or other similar document reflecting the cost incurred by the agency should be attached to the Declaration submitted by the agency or its designee.

“(5) Where the agency seeks a cost award based on an estimate of actual costs incurred, the Declaration should explain the reason actual cost information is not available.

“(6) The ALJ may, at his or her discretion, permit any party to present testimony relevant to the imposition and reasonableness of costs.

“(c) At the Hearing, the evidence related to costs shall be presented by the agency before conclusion of its case in chief.

“(d) In the proposed decision the ALJ shall make factual findings and legal conclusions regarding the agency's request for costs. When a cost award is less than the amount requested or is denied altogether, the proposed decision shall state the reasons. When costs are awarded, the proposed decision shall include an order setting forth the amount to be paid.”

## LEGAL CONCLUSIONS

1. Clear and convincing evidence to a reasonable certainty established cause for discipline of respondent's vocational nurse license pursuant to BPC section 2878(a) in conjunction with BPC section 2878.5(a) in that respondent violated HSC section 11173(a) by reason of Finding 3.B.



2. Clear and convincing evidence to a reasonable certainty established cause for discipline of respondent's vocational nurse license pursuant to BPC section 2878(a) in conjunction with BPC section 2878.5(a) in that respondent violated BPC section 4060 by reason of Finding 3.C.

3. Clear and convincing evidence to a reasonable certainty established cause for discipline of respondent's vocational nurse license pursuant to BPC section 2878(a) in conjunction with BPC section 2878.5(a) by reason of Finding 3.D.

4. Clear and convincing evidence to a reasonable certainty established cause for discipline of respondent's vocational nurse license pursuant to BPC section 2878(a) in conjunction with BPC section 2878.5(b) by reason of Finding 3.E.

5. Clear and convincing evidence to a reasonable certainty established cause for discipline of respondent's vocational nurse license pursuant to BPC section 2878(a) in conjunction with BPC section 2878.5(e) by reason of Finding 3.F.

6. Clear and convincing evidence to a reasonable certainty established cause for discipline of respondent's vocational nurse license pursuant to BPC section 2878(j) by reason of Finding 3.G.

7. Pursuant to 16 CCR section 2524, the Board has adopted the following guidelines to be considered in imposing discipline on an LVN:

"In determining whether revocation, suspension or probation should be imposed in a given disciplinary action, the following factors should be considered:

- Nature and severity of the act(s), offenses, or crimes under consideration.
- Actual or potential harm to the public.
- Actual or potential harm to any patient.
- Prior disciplinary record.
- Prior warnings on record or prior remediation.
- Number and/or variety of current violations.
- Mitigation evidence.
- Rehabilitation evidence.

- In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
- Overall criminal record.
- Time passed since the acts or offenses occurred.
- If applicable, evidence of expungment proceedings pursuant to Penal Code section 1203.4.

In this case, more than 3½ years have elapsed since respondent engaged in the violations set forth in Legal Conclusions 1-6. Respondent's misconduct was serious, in that he used his position as an LVN to obtain access to controlled substances, he engaged in numerous dishonest acts to further his addiction, and his actions had the potential to harm patients and the public, in that he was under the influence of painkillers and/or alcohol while at work. There was no evidence of actual harm to any patient or member of the public due to respondent's drug and alcohol abuse. Respondent's misconduct is directly attributable to his addiction to painkillers, for which he has received treatment and undergone rehabilitation. Respondent originally began using narcotic medication after an injury when it was lawfully prescribed to him. Respondent did attempt drug rehabilitation in 1999 but did not complete the program and did not achieve sobriety until January 26, 2001. Respondent has remained clean and sober for more than 1½ years as of the date of hearing. Respondent has no criminal record and no record of prior disciplinary action by the Board.

8. Under all of the facts and circumstances herein, it would not be contrary to the public interest to permit respondent to retain his LVN license, with appropriate terms and conditions of probation. Respondent has demonstrated impressive rehabilitation in this matter. He participates in a support group that sustains and encourages his sobriety. He is currently employed as an LVN and is performing his duties in a manner consistent with public health and safety. The fact that respondent's wife was willing to "turn him in" to his employer rather than let him work while under the influence of alcohol is a good indication that he is now in an environment where a return to his prior addictive behavior would not be tolerated. Respondent is unlikely to engage in similar misconduct in the future.

9. Pursuant to BPC section 125.3, the costs of the investigation and prosecution of the case shall be awarded to the Board in the amount of \$7,123.50 by reason of Finding 11.

## ORDER

Vocational Nurse License No. VN 140431 issued to respondent Daniel Gonzales is revoked pursuant to Legal Conclusions 1-6, separately and collectively. However, the revocation is stayed, and respondent is placed on probation for four (4) years, under the following terms and conditions:

1. OBEY ALL LAWS

Respondent shall obey all federal, state and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law to the Board within five (5) days of occurrence. To ensure compliance with this term, respondent shall submit two (2) completed fingerprint cards and the applicable fingerprint processing fees to the Board within thirty (30) days of the effective date of the decision, unless the Board determines that fingerprint cards were already submitted by the respondent as part of his licensure application process effective July 1, 1996. Respondent shall also submit a recent 2" x 2" photograph of himself within thirty (30) days of the effective date of the decision.

2. COMPLIANCE WITH PROBATION PROGRAM AND QUARTERLY REPORT REQUIREMENTS

Respondent shall fully comply with terms and conditions of the probation established by the Board and shall cooperate with the representatives of the Board in its monitoring and investigation of the respondent's compliance with the Probation Program.

Respondent shall submit quarterly reports, under penalty of perjury, in a form required by the Board. The reports shall certify and document compliance with all the conditions of probation.

3. NOTIFICATION OF ADDRESS AND TELEPHONE NUMBER CHANGE(S)

Respondent shall notify the Board, in writing, within five (5) days of a change of residence or mailing address, of his new address and any change in his work and/or home telephone numbers.

4. NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF STATE

Respondent shall notify the Board, in writing, within five (5) days, if he leaves California to reside or practice in another state.

Respondent shall notify the Board, in writing, within five (5) days, upon his return to California.

The period of probation shall not run during the time respondent is residing or practicing outside California.

5. NOTIFICATION TO EMPLOYER(S)

When currently employed or applying for employment in any capacity in any health care profession, respondent shall notify his employer of the probationary status of respondent's license. This notification to the respondent's current health care employer shall occur no later than the effective date of the Decision. The respondent shall notify any prospective health care employer of his probationary status with the Board prior to accepting such employment. This notification shall be by providing the employer or prospective employer with a copy of the Board's Accusation and Disciplinary Decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit quarterly reports to the Board. The reports shall be on a form provided by the Board, shall include a performance evaluation and such other information as may be required by the Board.

Respondent shall notify the Board, in writing, within five (5) days of any change in employment status. Respondent shall notify the Board, in writing, if he is terminated from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination.

6. INTERVIEWS/MEETINGS WITH BOARD REPRESENTATIVE(S)

Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board, or its designated representatives.

7. EMPLOYMENT REQUIREMENTS AND LIMITATIONS

During probation, the respondent shall work in his licensed capacity in the State of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

While on probation, respondent shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a Board approved continuing education course except as approved, in writing, by the Board.

Respondent shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

8. SUPERVISION REQUIREMENTS

Respondent shall obtain prior approval from the Board, before commencing any employment, regarding the level of supervision provided to the respondent while employed as a licensed vocational nurse or psychiatric technician.

Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants or unlicensed assistive personnel) during the period of probation except as approved, in writing, by the Board.

9. COMPLETION OF EDUCATIONAL COURSE(S)

Respondent, at his own expense, shall enroll and successfully complete courses substantially related to the violations, as no later than the end of the first year of probation; or the respondent shall be suspended from practice, until he has enrolled in and has successfully completed the specified coursework.

The coursework shall be in addition to that required for license renewal. The Board shall notify the respondent of the course content and number of contact hours required. Within thirty (30) days of the Board's written notification of assigned coursework, respondent shall submit a written plan to comply with this requirement. The Board shall approve such plan prior to enrollment in any course of study.

Upon successful completion of the course, respondent shall cause the instructor to furnish proof to the Board within thirty (30) days of course completion.

10. MAINTENANCE OF VALID LICENSE

Respondent shall, at all times while on probation, maintain an active current license with the Board, including any period during which suspension or probation is tolled.

Should respondent's license, by operation of law or otherwise, expire, upon renewal or reinstatement respondent's license shall be subject to any and all terms of this probation not previously satisfied.

11. EXAMINATION BY A PHYSICIAN

Within sixty (60) days of the effective date of the Decision, respondent shall submit to a physical examination by a physician of his choice who meets minimum criteria established by the Board. The physician must be licensed in California and Board certified in Family Practice, Internal Medicine or a related specialty. The purpose of this examination shall be to determine respondent's ability to perform all professional duties with safety to self and to the public. Respondent shall provide the examining

physician with a copy of the Board's Disciplinary Order prior to the examination. Cost of such examination shall be paid by the respondent.

Respondent shall cause the physician to complete a written medical report on a form provided by the Board. This report shall be submitted by the physician to the Board within ninety (90) days of the effective date of the Decision. If the examining physician finds that respondent is not physically fit to practice or can only practice with restrictions, the examining physician shall notify the Board, in writing within five (5) working days. The Board shall notify the respondent in writing of the examining physician's determination of unfitness to practice and shall order the respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Board is satisfied of respondent's fitness to practice safely and has so notified the respondent. Respondent shall document compliance in the manner required by the Board.

## **12. PSYCHOLOGICAL EVALUATION**

Within sixty (60) days of the effective date of the Decision, respondent shall submit to a psychiatric/psychological evaluation. The evaluation shall be performed by a psychiatrist licensed in California and Board certified in psychiatry, or by a clinical psychologist licensed in California. This evaluation shall be for the purpose of determining respondent's current mental, psychological and emotional fitness to perform all professional duties with safety to self and to the public. Respondent shall provide the evaluator with a copy of the Board's Disciplinary Order prior to the evaluation. Cost of such evaluation shall be paid by the respondent.

Respondent shall cause the evaluator to submit to the Board a written psychological report concerning respondent's status and progress as well as such other information as may be requested by the Board. This report shall be submitted within ninety (90) days from the effective date of the Decision.

If the evaluator finds that respondent is not psychologically fit to practice safely, or can only practice with restrictions, the evaluator shall notify the Board, in writing, within five (5) working days. The Board shall notify the respondent in writing of the evaluator's determination of unfitness to practice and shall order the respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Board is satisfied of respondent's fitness to practice safely and has so notified the respondent. Respondent shall document compliance in the manner required by the Board.

If the evaluator finds that psychotherapy is required, respondent shall participate in a therapeutic program at the Board's discretion. Cost of such therapy shall be paid by the Respondent.

13. CHEMICAL DEPENDENCY SUPPORT/RECOVERY GROUPS

Within five (5) days of the effective date of the Decision, respondent shall begin attendance at a chemical dependency support group (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Group). Verified documentation of attendance shall be submitted by the respondent with each quarterly report. Respondent shall continue attendance in such a group for the duration of probation.

14. ABSTAIN FROM CONTROLLED SUBSTANCES

Respondent shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in section 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

15. ABSTAIN FROM USE OF ALCOHOL

Respondent shall completely abstain from the use of alcoholic beverages during the period of probation.

16. SUBMIT BIOLOGICAL FLUID SAMPLES

Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon request by the Board or its designee. There will be no confidentiality in test results; positive test results will be immediately reported to the Board and the respondent's current employer.

17. COST RECOVERY REQUIREMENTS

Pursuant to Legal Conclusion 9, respondent shall pay costs of the investigation and prosecution of the case to the Board in the amount of \$7,123.50. Respondent shall be permitted to make periodic payments, in amounts and at intervals to be determined by the Board. Failure to make payments in accordance with this Decision shall be considered a violation of probation.

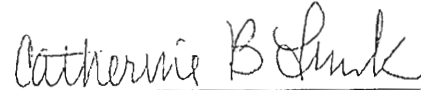
The Board may conditionally renew respondent's license, for a maximum of one year, if he demonstrates financial hardship. The respondent shall enter into a formal agreement with the Board to reimburse the unpaid costs within that one year period.

Except as provided above, the Board shall not renew or reinstate respondent's license if he fails to pay all the costs as directed in this Decision.

18. VIOLATION OF PROBATION

If the respondent violates the conditions of his probation, the Board after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed revocation of the respondent's license. If during the period of probation, an accusation or petition to revoke has been filed against the respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board. Upon successful completion of probation, the respondent's license will be fully restored.

Dated: 9/12/02



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CATHERINE B. FRINK  
Administrative Law Judge  
Office of Administrative Hearings



DECLARATION OF SERVICE BY CERTIFIED MAIL  
AND  
DECLARATION OF SERVICE BY FIRST CLASS MAIL

Case Name: In the Matter of the Accusation  
Against: Daniel Gonzales

Case No.: 6444

I declare:

I am employed in the County of Sacramento, California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 2535 Capitol Oaks Drive, Suite 205, Sacramento, California 95833-2945.

On December 20, 2002, I served the attached

COVER LETTER, DECISION, ACCUSATION, CALIFORNIA CODE OF REGULATIONS,  
TITLE 16, SECTION 2522.5, CALIFORNIA ADMINISTRATIVE PROCEDURES ACT,  
SECTIONS 11518, 11519, 11521, 11522, STANDARDS FOR REINSTATEMENT OR  
REDUCTION OF PENALTY, BUSINESS AND PROFESSIONS CODE, SECTION 2787.7

in said cause, by placing a true copy thereof enclosed in two separate sealed envelopes with postage thereon fully prepaid by Certified Mail and First Class Mail, in the United States mail at Sacramento, California, addressed as follows:

NAME/ADDRESS

CERTIFIED MAIL NUMBER

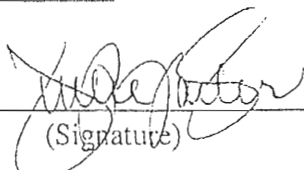
Daniel Gonzales  
5500 West Judy Court  
Visalia, CA 93277

7002 0510 0000 2246 0041

I declare under penalty of perjury the foregoing is true and correct, and that this declaration was executed at Sacramento, California on December 20, 2002.

JULIE BAXTER

(Typed Name)

  
(Signature)

cc: Catherine Frink, Administrative Law Judge  
Kent Harris, Deputy Attorney General